

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RALPH ROSEN and MINDY ROSEN,

Plaintiffs.

vs.

HSBC BANK USA, EVERHOME MORTGAGE, INC., EVERBANK FINANCIAL CORP., FIDELITY NATIONAL FINANCIAL, INC., BLACK KNIGHT FINANCIAL SERVICES, INC., SERVICELINK HOLDINGS, LLC, LPS FIELD SERVICES, INC., LENDER PROCESSING SERVICES, INC., BUCZEK ENTERPRISES, LLC, WORTHEM'S HOME DETAILING, INC., RALPH WORTHEM, RICHARD BODDIE, JOHN'S CONSTRUCTION AND JOHN DOES 1-10, A SERIES OF FICTITIOUS NAMES/ENTITIES

Defendants.

CIVIL ACTION NO.: 14-CV-02926

ANSWER OF HSBC BANK, USA, EVERHOME MORTGAGE, INC., AND EVERBANK FINANCIAL CORP.

HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. (hereinafter referred to as "HSBC, Everhome and Everbank") by way of Answer to the Complaint says that:

1. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 1 of the Complaint.

2. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 2 of the Complaint.

3. HSBC, Everhome and Everbank make no answer to paragraph 3 of the Complaint inasmuch as it states a legal conclusion.

4. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 4 of the Complaint.

5. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 5 of the Complaint.

6. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 6 of the Complaint.

7. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in the first sentence of paragraph 7 of the Complaint, however, deny the balance of the contents of paragraph 7 of the Complaint.

8. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 8 of the Complaint.

AS TO PARTIES

9. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 9 of the Complaint.

10. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 10 of the Complaint.

11. HSBC, Everhome and Everbank admit the allegations contained in paragraph 11 of the Complaint, however, to the extent that this paragraph alleges any wrongdoing on the part of HSBC, Everhome and Everbank, said allegations are specifically denied.

12. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 12 of the Complaint.

13. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 13 of the Complaint.

14. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 14 of the Complaint.

15. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 15 of the Complaint.

16. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 16 of the Complaint.

17. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 17 of the Complaint.

18. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 18 of the Complaint.

19. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 19 of the Complaint.

AS TO JURISDICTION AND VENUE

20. HSBC, Everhome and Everbank make no answer to paragraph 20 of the Complaint and leaves Plaintiffs to their proofs.

AS TO FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

21. No answer is made to paragraph 21 of the Complaint inasmuch as it states a legal conclusion.

22. No answer is made to paragraph 22 of the Complaint inasmuch as it states a legal conclusion.

23. No answer is made to paragraph 23 of the Complaint inasmuch as it states a legal conclusion.

24. No answer is made to paragraph 24 of the Complaint inasmuch as it states a legal conclusion.

25. No answer is made to paragraph 25 of the Complaint inasmuch as it states a legal conclusion.

26. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 26 of the Complaint.

27. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 27 of the Complaint.

28. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 28 of the Complaint.

29. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 29 of the Complaint.

30. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 30 of the Complaint.

31. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 31 of the Complaint.

32. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 32 of the Complaint.

33. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 33 of the Complaint.

34. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 34 of the Complaint.

35. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 35 of the Complaint.

36. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 36 of the Complaint.

37. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 37 of the Complaint.

38. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 38 of the Complaint.

39. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 39 of the Complaint.

40. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 40 of the Complaint.

41. No answer is being made to paragraph 41 of the Complaint inasmuch as it states a legal conclusion.

42. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 42 of the Complaint.

43. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in the first sentence of paragraph 43 of the Complaint and makes no answer to the balance of paragraph 43 inasmuch as it states a legal conclusion.

44. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 44 of the Complaint.

45. HSBC, Everhome and Everbank admit the allegations contained in paragraph 45 of the Complaint, however, to the extent that this paragraph alleges any wrongdoing on the part of HSBC, Everhome and Everbank, said allegations are specifically denied.

46. HSBC, Everhome and Everbank admit the allegations contained in the first sentence of paragraph 46 of the Complaint, however, deny the second sentence of paragraph 46 of the Complaint.

47. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 47 of the Complaint.

48. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 48 of the Complaint.

49. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 49 of the Complaint.

50. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 50 of the Complaint.

51. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 51 of the Complaint, however, to the extent that this paragraph alleges any wrongdoing on the part of HSBC, Everhome and Everbank, said allegations are specifically denied.

52. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 52 of the Complaint, however, to the extent that this paragraph alleges any wrongdoing on the part of HSBC, Everhome and Everbank, said allegations are specifically denied.

53. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 53 of the Complaint, however, to the extent that this paragraph alleges any wrongdoing on the part of HSBC, Everhome and Everbank, said allegations are specifically denied.

54. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 54 of the Complaint, however, to the extent that this paragraph alleges any wrongdoing on the part of HSBC, Everhome and Everbank, said allegations are specifically denied.

AS TO COUNT ONE

55. HSBC, Everhome and Everbank repeat and re-allege each and every answer to the previous 54 paragraphs of the Complaint as though set forth more fully herein at length.

56. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 56 of the Complaint.

57. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 57 of the Complaint, however, to the extent that this paragraph alleges any wrongdoing on the part of HSBC, Everhome and Everbank, said allegations are specifically denied.

58. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 58 of the Complaint.

59. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 59 of the Complaint.

WHEREFORE, HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. demand judgment dismissing the Complaint in its entirety together with costs, attorneys' fees and such other and further relief as this Court deems equitable and just.

AS TO COUNT TWO

60. HSBC, Everhome and Everbank repeat and re-allege each and every answer to the previous 59 paragraphs of the Complaint as though set forth more fully herein at length.

61. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 61 of the Complaint.

62. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 62 of the Complaint.

63. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 63 of the Complaint.

WHEREFORE, HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. demand judgment dismissing the Complaint in its entirety together with costs, attorneys' fees and such other and further relief as this Court deems equitable and just.

AS TO COUNT THREE

64. HSBC, Everhome and Everbank repeat and re-allege each and every answer to the previous 63 paragraphs of the Complaint as though set forth more fully herein at length.

65. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 65 of the Complaint.

66. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 66 of the Complaint.

67. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 67 of the Complaint.

68. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 68 of the Complaint.

WHEREFORE, HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. demand judgment dismissing the Complaint in its entirety together with costs, attorneys' fees and such other and further relief as this Court deems equitable and just.

AS TO COUNT FOUR

69. HSBC, Everhome and Everbank repeat and re-allege each and every answer to the previous 68 paragraphs of the Complaint as though set forth more fully herein at length.

70. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 70 of the Complaint.

71. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 71 of the Complaint.

72. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 72 of the Complaint.

73. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 73 of the Complaint.

74. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 74 of the Complaint.

WHEREFORE, HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. demand judgment dismissing the Complaint in its entirety together with costs, attorneys' fees and such other and further relief as this Court deems equitable and just.

AS TO COUNT FIVE

75. HSBC, Everhome and Everbank repeat and re-allege each and every answer to the previous 74 paragraphs of the Complaint as though set forth more fully herein at length.

76. HSBC, Everhome and Everbank admit the allegations contained in the first sentence of paragraph 76 of the Complaint, however, HSBC, Everhome and Everbank deny each and every allegation contained in the second sentence of paragraph 76 of the Complaint.

77. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 77 of the Complaint.

WHEREFORE, HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. demand judgment dismissing the Complaint in its entirety together with costs, attorneys' fees and such other and further relief as this Court deems equitable and just.

AS TO COUNT SIX

78. HSBC, Everhome and Everbank repeat and re-allege each and every answer to the previous 77 paragraphs of the Complaint as though set forth more fully herein at length.

79. HSBC, Everhome and Everbank admit the allegations contained in the first sentence of paragraph 79 of the Complaint, however, HSBC, Everhome and Everbank deny each and every allegation contained in the second sentence of paragraph 79 of the Complaint.

80. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 80 of the Complaint, however, to the extent that this paragraph alleges any wrongdoing on the part of HSBC, Everhome and Everbank, said allegations are specifically denied.

81. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 81 of the Complaint.

WHEREFORE, HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. demand judgment dismissing the Complaint in its entirety together with costs, attorneys' fees and such other and further relief as this Court deems equitable and just.

AS TO COUNT SEVEN

82. HSBC, Everhome and Everbank repeat and re-allege each and every answer to the previous 81 paragraphs of the Complaint as though set forth more fully herein at length.

83. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 83 of the Complaint.

84. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 84 of the Complaint.

85. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 85 of the Complaint.

86. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 86 of the Complaint.

87. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 87 of the Complaint.

WHEREFORE, HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. demand judgment dismissing the Complaint in its entirety together with costs, attorneys' fees and such other and further relief as this Court deems equitable and just.

AS TO COUNT EIGHT

88. HSBC, Everhome and Everbank repeat and re-allege each and every answer to the previous 87 paragraphs of the Complaint as though set forth more fully herein at length.

89. HSBC, Everhome and Everbank admit the allegations contained in the first sentence of paragraph 89 of the Complaint, however, deny the balance of paragraph 89 of the Complaint.

90. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 90 of the Complaint, however, to the extent that this paragraph alleges any wrongdoing on the part of HSBC, Everhome and Everbank, said allegations are specifically denied.

91. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 91 of the Complaint.

92. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 92 of the Complaint.

93. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 93 of the Complaint.

94. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 94 of the Complaint.

WHEREFORE, HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. demand judgment dismissing the Complaint in its entirety together with costs, attorneys' fees and such other and further relief as this Court deems equitable and just.

AS TO COUNT NINE

95. HSBC, Everhome and Everbank repeat and re-allege each and every answer to the previous 94 paragraphs of the Complaint as though set forth more fully herein at length.

96. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 96 of the Complaint.

97. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 97 of the Complaint.

98. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 98 of the Complaint.

99. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 99 of the Complaint.

WHEREFORE, HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. demand judgment dismissing the Complaint in its entirety together with costs, attorneys' fees and such other and further relief as this Court deems equitable and just.

AS TO COUNT TEN

100. HSBC, Everhome and Everbank repeat and re-allege each and every answer to the previous 99 paragraphs of the Complaint as though set forth more fully herein at length.

101. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 101 of the Complaint.

102. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 102 of the Complaint.

103. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 103 of the Complaint.

104. HSBC, Everhome and Everbank have neither the information nor knowledge sufficient to either affirm or deny the allegations contained in paragraph 104 of the Complaint.

105. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 105 of the Complaint.

106. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 106 of the Complaint.

107. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 107 of the Complaint.

108. HSBC, Everhome and Everbank make no answer to paragraph 108 of the Complaint inasmuch as this paragraph states a legal conclusion.

109. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 109 of the Complaint.

110. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 110 of the Complaint.

111. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 111 of the Complaint.

112. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 112 of the Complaint.

113. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 113 of the Complaint.

114. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 114 of the Complaint.

115. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 115 of the Complaint.

WHEREFORE, HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. demand judgment dismissing the Complaint in its entirety together with costs, attorneys' fees and such other and further relief as this Court deems equitable and just.

AS TO COUNT ELEVEN

116. HSBC, Everhome and Everbank repeat and re-allege each and every answer to the previous 115 paragraphs of the Complaint as though set forth more fully herein at length.

117. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 117 of the Complaint.

118. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 118 of the Complaint.

119. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 119 of the Complaint.

WHEREFORE, HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. demand judgment dismissing the Complaint in its entirety together with costs, attorneys' fees and such other and further relief as this Court deems equitable and just.

AS TO COUNT TWELVE

120. HSBC, Everhome and Everbank repeat and re-allege each and every answer to the previous 119 paragraphs of the Complaint as though set forth more fully herein at length.

121. HSBC, Everhome and Everbank deny each and every allegation contained in paragraph 121 of the Complaint.

WHEREFORE, HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. demand judgment dismissing the Complaint in its entirety together with costs, attorneys' fees and such other and further relief as this Court deems equitable and just.

AFFIRMATIVE DEFENSE

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a claim upon which relief may be granted against these Defendants.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs are barred by the Doctrine of Estoppel.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs are barred by the Doctrine of Unclean Hands.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs are barred by the Doctrine of Laches.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs are barred by virtue of the fact that any losses sustained by Plaintiffs were not within the control of these Defendants and were the result of acts of third parties over whom these Defendants had no control.

SIXTH AFFIRMATIVE DEFENSE

Any damages sustained by the Plaintiffs herein were the direct and proximate result of Plaintiffs' own actions and these Defendants may not be held liable for any portion of said damages.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred and/or mitigated by virtue of the Doctrine of Comparative Negligence.

EIGHTH AFFIRMATIVE DEFENSE

At all times herein, these Defendants acted honestly, diligently, and reasonably in its dealings with Plaintiffs.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a claim upon which relief can be granted inasmuch as Plaintiffs have sustained no damages as a result of the allegations contained in the Complaint.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs are barred in whole or in part by the applicable Statute of Limitations.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs are barred by the express terms of the subject mortgage.

TWELFTH AFFIRMATIVE DEFENSE

HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. violated no duty or obligation owed to the Plaintiffs under common law, by statute, under any applicable contract or otherwise.

THIRTEENTH AFFIRMATIVE DEFENSE

Although HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. deny that they committed any violations of the Fair Debt Collection Practices Act, in the event that a violation is determined to have occurred, said violation was unintentional and resulted from a bona fide error and notwithstanding the maintenance of procedures reasonably adapted to avoid any such error and therefore Plaintiffs' claims are barred pursuant to 15 U.S.C. § 1692(k)(c).

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the Doctrine of Waiver.

FIFTEENTH AFFIRMATIVE DEFENSE

The New Jersey Consumer Fraud Act does not apply to HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. since they did not sell or advertise any merchandise or real estate to the Plaintiffs.

SIXTEENTH AFFIRMATIVE DEFENSE

The Fair Debt Collection Practices Act does not apply to HSBC Bank, USA, Everhome Mortgage, Inc., and Everbank Financial Corp. since they are not “debt collectors” as defined by the Act.

Dated: Parsippany, New Jersey
July 17, 2014

FEIN, SUCH, KAHN & SHEPARD, P.C.
Attorneys for Defendants,
HSBC BANK, USA, EVERHOME MORTGAGE, INC.
and EVERBANK FINANCIAL CORP.

By: _____



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